

# NOVELL CUSTOMER CONNECTIONS®

## Master License Agreement

### Signature Page

This Master License Agreement ("MLA") is entered into by the undersigned, being either Novell, Inc., a Delaware corporation with headquarters at 1555 North Technology Way, Orem, Utah 84097, or a subsidiary of Novell, Inc. (in either case "Novell"), and the customer identified below ("Customer").

#### CUSTOMER INFORMATION

Full Legal Name: State of Maryland

☐ Corporation ☐ Partnership ☐ Other \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### MLA Checklist (Complete these Schedules before signing the MLA)

- ☐ Schedule A, MLA Coordinators (Required) -- Identify Customer's MLA Coordinators and Contacts
- ☐ Schedule B, Premium Service Contacts (Required)
- ☐ Schedule C, Order Form, and/or purchase order (Required)
- ☐ Membership Form (Required)

Send 2 signed MLA originals to Novell, Major Markets, MS Q-313, 1555 N Technology Way, Orem UT 84097-2399 USA.

MLA Contract # (completed by Novell): MSZ1167-000Z06

Novell and Customer each represent that it has read and understands this MLA, that by signing below it agrees to be bound by its terms, and that it has caused this MLA to be executed by its duly authorized representative.

☒ Novell, Inc.

☐ Novell, Inc. Subsidiary Name: \_\_\_\_\_

Signature David Hollan

Print Name David Hollan  
Contract Manager

Title \_\_\_\_\_

Date 7-31-00

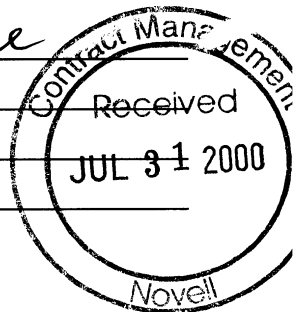
Customer

Signature Alan Moore

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



# Master License Agreement

## Terms

**1 Statement of Purpose.** Novell has created a Master License Agreement program ("Program") to establish a contractual relationship with certain key end user customers to provide them with licenses to Novell products as well as a preferred level of technical and sales support. The MLA describes the terms under which Customer may participate in the Program.

**2 Definitions.** Capitalized terms, as used in the MLA, are defined as follows. Unless otherwise indicated, references in the MLA to a particular Section refer to a section within these Terms.

2.1 Affiliate means a Customer affiliate that does not meet the ownership qualifications of a Subsidiary but that, if approved by the Customer that executes the MLA and by Novell, may participate in the MLA upon submission to and acceptance by Novell of a completed Membership Form which includes agreement to the MLA terms.

2.2 Annual Period means the period beginning on the first day of the month following the Effective Date and ending one year thereafter, and each consecutive one-year period thereafter during the MLA term.

*See Addendum* 2.3 Customer means, individually, the Customer signing this MLA and, collectively, the Customer and its parent company, Subsidiaries, and Affiliates. All rights and licenses granted to the Customer under the MLA will apply to the parent company, Subsidiaries, and Affiliates of the Customer signing this MLA, if each such entity first agrees to be bound by the MLA terms by submitting to Novell a signed Membership Form. The Customer signing this MLA will be responsible for the actions and omissions regarding MLA rights and obligations of any Customer entity that does not submit a signed Membership Form to Novell.

2.4 Discounted License Fee means the net License Fee payable by Customer after application of the Volume Discount.

2.5 Discounted Maintenance Fee means the net Maintenance Fee payable by Customer after application of the Volume Discount.

2.6 Documentation means user documentation and manuals (including CD-ROM versions, when available) provided by Novell which accompany a Software product.

*\** 2.7 Effective Date means the date on which the MLA is signed by an authorized Novell representative, which shall follow Customer's signing.

2.8 Internal Use means Use by (a) Customer's employees for Customer's internal business, and (b) Customer's consultants and contractors only while performing work for Customer on Customer's premises.

2.9 License Fee means the Software license fee identified in the MLA Price List.

2.10 Licensed Works means, collectively, the Documentation, Software, and any Upgrades and Updates licensed by Novell to Customer under the MLA.

2.11 Maintenance means, in general, the provision of Upgrades, Updates, and technical services during the term of the MLA, as more fully described in Section 6 below.

2.12 Maintenance Fee means the annual Maintenance fee identified in the MLA Price List.

2.13 Master Software means master media from which Customer may duplicate and install Licensed Works under the MLA.

2.14 Membership Form means the attached Membership Form which

each Customer ordering location, **including the Customer signing the MLA** and any Subsidiaries or Affiliates, must complete to order under the MLA.

2.15 MLA Price List means the then-current MLA Product Availability and Price List provided by Novell. The MLA Price List is hereby made a part of the MLA, but is subject to change by Novell as set forth in Section 7.5. For licenses made available through an entity other than Novell, Inc. (such as Novell Japan), the price list is the then-current list provided by that entity.

2.16 Order Form means a completed and signed Schedule C and/or a purchase order that contains the following information: (a) the product ordered, (b) the applicable discount rate, (c) License Fees and Discounted License Fees, (d) Maintenance Fees and Discounted Maintenance Fees and the Maintenance coverage period, (e) ship-to information, (f) invoice-to information, (g) installation location, and (h) purchasing agent contact, telephone, and fax number, (i) any other information specified by Novell on Schedule C.

2.17 Program Guide means the then-current Master License Agreement Customer Guide and the then-current Master License Agreement Brochures, inclusive. The Program Guide is hereby made a part of the MLA, but it is subject to change by Novell. A revised Program Guide will become effective upon publication. If there is any contradiction or inconsistency between any provision in the Program Guide and the MLA terms, the MLA terms will govern.

2.18 Software means (collectively or individually, as the context requires) the Novell software product(s) licensed under this MLA.

2.19 Subsidiary means a company, the majority of whose stock entitled to vote for election of directors is owned, directly or indirectly, by the Customer signing this MLA, so long as such control exists. To order under the MLA, a Subsidiary must first submit to Novell a signed Membership Form that includes agreement to the MLA terms.

2.20 Update means a fix or compilation of fixes released by Novell during the term of the MLA to correct operational defects (program bugs) in the Software.

2.21 Upgrade means any new version of a Software product which bears the same product name, including version changes evidenced by a number change immediately to either the right or left of the decimal (for example, GroupWise 5.1 to 5.2 or GroupWise 4.0 to 5.0). If a question arises as to whether a product offering is an Upgrade or a new product, Novell's opinion will prevail, provided that Novell treats the product offering the same for its end user customers generally.

2.22 Volume Discount means the discount identified on the volume discount table in the Program Guide.

**3 Contract Coordinator.** Customer shall identify on Schedule A the name and address information of its Contract Coordinator responsible for conducting Customer's day-to-day MLA business, including the following:

- 3.1 Ensure MLA Schedules (including Order Forms) are executed and remain updated during the MLA;
- 3.2 Select and designate the Fulfillment Agent(s), if applicable;
- 3.3 Coordinate additional orders;
- 3.4 Coordinate the required annual self-audits.

Customer may replace its Contract Coordinator by delivering written notice to Novell signed by the outgoing Contract Coordinator.

**4 Licenses.** The license terms for licenses granted by Novell are made available through and provided in the Membership Form's License Terms Attachment.

## **5 Delivery of Master Software and Documentation.**

- 5.1 **Master Software.** Novell will make available to Customer Master Software from which Customer may copy and install Licensed Works according to the Program Guide. Customer must keep a written record of the location of sets of Master Software it receives under the MLA. Upon MLA termination, Customer's right to use Master Software terminates, and Customer must return all Master Software to Novell (see 9.5.1 below). Master Software is not available in all regions; in such regions Novell will fulfill MLA orders using other media.
- 5.2 **Duplication.** Customer may make and install Software copies from the Master Software for Customer's Internal Use (including an archival or backup copy for each Software license). All copies of Software must be made from the Master Software and must reproduce the Master Software's serial numbers and all proprietary rights notices. See Section 7 below for the payment terms for Software licenses.
- 5.3 **Delivery Terms.** Delivery of Master Software and Documentation from Novell to Customer in the United States will be made Cost & Freight, Customer's facility, Novell's carrier, ground only. All other freight arrangements will be prepaid and billed to Customer. For delivery outside the U.S., Novell will select a carrier to transport Master Software to port of entry and will pay the cost of insurance and freight. Customer will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees, except that for shipments from Ireland or The Netherlands to Norway or Switzerland, Novell will be so responsible. For shipments from Ireland, Novell will select a carrier and pay freight to Customer's designated delivery address if within the European Union or to the national border (port of entry) for other destinations. In either case, Customer will be responsible for all applicable import duties and value added tax, or other applicable taxes and fees.
- 5.4 **Title & Risk of Loss.** In the case of shipment to destinations within the United States, title to any media and Documentation, exclusive of the rights retained under the MLA in trademarks, patents, copyrights, trade names, trade secrets and intellectual property (net "Deliverables"), and all risk of loss will pass to Customer upon delivery to Customer. In the case of shipments from the United States to destinations outside the U.S., title to and risk of loss concerning such Deliverables will remain with Novell until the shipment arrives at the port of entry in the importing country (or at a bonded warehouse within Canada or Mexico if Customer requests shipment to those countries). For all shipments originating in Ireland, terms are Cost & Freight with title passing to Customer at the Irish shipment point. Notwithstanding the foregoing, no title to Master Software is transferred to Customer.
- 5.5 **Fulfillment Agent.** Customer's Contract Coordinator may designate a Fulfillment Agent (up to a total of 5 for all Customers under the MLA and no more than 1 per Customer location that has signed a Membership Form) to assist Customer in MLA fulfillment, by executing the then-current MLA Fulfillment Agent Addendum together with Novell and a reseller accepted by Novell.

**6 Maintenance.** A primary MLA purpose is to ensure Customer has access to the most current revision of the Software and available technical support. Accordingly, unless expressly indicated otherwise, the Maintenance services described below are a mandatory part of all Software licenses granted under the MLA, and Discounted Maintenance Fees will be charged for such services throughout the MLA term. If Customer has not paid due Maintenance within 30 days after the beginning of a new Annual Period, Novell may automatically invoice Customer for Maintenance Customer is obligated to pay during that Annual Period. Customer is obligated to pay its Maintenance obligations independent of any notification from Novell; for such Maintenance payments, if Customer has not delivered an Order Form to Novell within 30 days after the beginning of the new Annual Period, the MLA

constitutes the required authorization or Order Form from Customer for such Maintenance payment.

During the period for which Maintenance is paid, Novell will provide Customer with the following Maintenance:

- 6.1 **Upgrades and Updates.** Novell will provide any Upgrades and Updates released by Novell within a reasonable period of time after they become commercially available.
- 6.2 **Technical Services.** Novell will provide to Customer the technical services described in the then-current MLA Premium Service Guide, the terms of which are incorporated into this MLA. Novell may revise the Premium Service Guide at any time in order to, among other things, comply with applicable laws, regulations, and tariffs. Any revised Premium Service Guide will supersede prior versions and become effective upon publication.
- 6.2.1 **Information Transfer.** As described in the Premium Service Guide, Customer may access electronic on-line services to transfer data electronically and/or may authorize a Novell support engineer to access Customer's network via a remote connection to work directly on line with the Customer to assist in resolving technical problems. In either case, Customer agrees that notwithstanding the confidentiality provisions, Customer will not submit via such on-line links or otherwise give Novell access to any documents, files, programs or other data ("Customer Data") that are, or are alleged to be, confidential or proprietary to a third party unless Customer first obtains all necessary licenses to do so. Customer shall be liable for any claims, liability, damages, costs, and expenses (including reasonable attorneys' fees) incurred by Novell directly or indirectly as a result of Customer's breach of such obligation. CUSTOMER UNDERSTANDS ITS FILES MAY BE ALTERED OR DAMAGED IN THE COURSE OF NOVELL PROVIDING TECHNICAL SERVICES, WHETHER BY TELEPHONE, E-MAIL, FAX, ON-SITE OR VIA REMOTE CONNECTION; CUSTOMER AGREES TO TAKE APPROPRIATE MEASURES TO ISOLATE AND BACK UP ITS SYSTEMS ACCORDINGLY.
- 6.2.2 **Optional On-Site Services.** If Customer requests the optional on-site services, Novell agrees to indemnify and hold Customer harmless from any liability, damages, costs, and expenses (including reasonable attorneys' fees) arising out of claims for personal injury or property damage caused by the negligence or willful misconduct of Novell or its authorized employees or agents in the course of providing technical services on Customer's premises. Novell's liability under this section shall be reduced proportionally to the extent that any act or omission of Customer, or its employees, agents, or representatives, contributed to such Liability. For purposes of this Section, "property damage" does not include damage to, or loss of, files, data, or other information. *On-Site Support may not be available in all worldwide locations. Contact Novell for current information.*
- 6.2.3 **Customer Contacts.** Customer shall identify on Schedule B the contact information of each of Customer's technical services contacts. See the then-current Premium Service Guide for any additional information.
- 6.3 **Upgrade Restrictions.** Customer agrees to accept and Use Upgrades subject to the provisions of the License Terms Attachment to the Membership Form.
- 7 Placing Orders and Payment Terms.**
- 7.1 **Discounted License Fee.** Customer may purchase licenses for Licensed Works by submitting to Novell a completed and signed Order Form for the applicable Discounted License and Maintenance Fees. The total, non-refundable Discounted License Fee for each Order Form will be payable in a lump sum. If during a month Customer makes copies of Software (a) for which Discounted License Fees have not been paid, and (b) for which the total applicable Discounted License Fees amount to \$5,000 or more, Customer must immediately submit an Order Form for all such copies. Customer must submit no later than the last day of each month an Order Form that identifies all Software

copies previously made for which no Order Form has been submitted and no Discounted License and Maintenance Fees paid.

- 7.2 Discounted Maintenance Fee. The mandatory Discounted Maintenance Fee will be calculated on an annual basis and paid annually in advance, with each Maintenance period expiring at the end of each Annual Period. The initial Discounted Maintenance Fee for a license will be calculated from the first day of the month following the earlier of (a) Customer's submission of the Order Form, or (b) Customer's making of a Software copy, through the end of the then-current Annual Period.
- 7.2.1 Optional Full-Term Payment. Upon signing the MLA, and at the start of any renewal term, Customer may elect to pay all Discounted Maintenance Fees for the full remaining term of the MLA, rather than on an annual basis as described in Section 7.2. In such event, Customer's Discounted Maintenance Fees will be calculated through the end of the MLA term. Customer may apply the full-term Discounted Maintenance Fees in calculating Customer's MLA discount.
- 7.3 Payment. All fees will be due and payable in U.S. Dollars within 30 days from the date of invoice.
- 7.4 Minimum Orders. The minimum amount per Order Form is \$5,000 before discount. This minimum requirement will not apply to Order Forms that must be submitted at the end of every month under Section 7.1 or to an order for Master Software. Each Customer location placing MLA orders must submit a completed Membership Form with an initial order of at least \$5,000 before discount.
- 7.5 Price and Product Changes. Novell may revise the MLA Price List at any time to (a) change the list prices for Software, Maintenance, and other products or services, and (b) add or delete Software licenses or other products or services available for purchase. Novell will not increase the list price of a License or Maintenance Fee for any Software during the MLA's current term once Customer has ordered such Software by valid Order Form and has paid the applicable fees. Any decrease in list prices will apply to any Customer orders received after publication of a new MLA Price List. Novell's obligation to protect Customer's list prices will not apply to special promotions and does not guarantee product availability for the full MLA term.
- 7.6 Late Payments. Payments made later than the due date will accrue interest from the date due to the date paid at the lesser of the rate of 12% per year or the highest rate allowed by applicable law. Customer agrees to pay reasonable costs and attorney's fees if Novell is required to undertake collection measures against Customer.
- 7.7 Installed Base. Customer's Installed Base (Novell product licenses available under the MLA which Customer purchased outside the MLA and is currently using) may be transitioned into the MLA (be licensed under the MLA at the product's most current version and receive Maintenance) through the purchase of Maintenance for the licenses. Maintenance is mandatory throughout the MLA term for products so transitioned. To transition licenses of System Products (products not identified in the MLA Price List as GroupWare Products) that are not at the current product revision level, Customer must upgrade, at the discounted Upgrade price, the licenses to the current revision level before purchasing the required Maintenance. To transition in licenses of GroupWare Products (as identified in the MLA Price List) that are not at the current product revision level, Customer must pay the cost of a minimum of 1 year of Maintenance; regardless of the time remaining in the MLA, Customer will not receive Maintenance after MLA expiration. Novell may modify the purchase requirements for transitioning licenses into the MLA.

## 8 Record Keeping and Audit.

- 8.1 Self-Audits. Customer will conduct an annual self-audit to identify (a) Customer's copying and use of the Licensed Works, and (b) the total number of workstations, computers or other devices connected to a network which uses Novell's Software, and (c) whether Customer has paid for all Licensed Works copied and/or used. Customer will provide the information from this self-audit to Novell in an annual written report within 30 days after the end of each Annual Period or termination of the MLA. The report will be made on the audit form provided by Novell. It is Customer's responsibility to timely provide the report without notice from Novell. If the audit shows Customer owes any fees, Customer will submit with the report a corresponding purchase order. If Customer is more than 30 days late in submitting the audit report, Novell may delay accepting orders or delivering technical support or other MLA benefits until it receives the audit.
- 8.2 Formal Audits. During the MLA term and for two years after its termination, Customer will maintain complete records showing (a) amounts due and paid, (b) copying and use of the Licensed Works, and (c) the total number of workstations, computers or other devices connected to a network which uses Novell's Software. During this time period Novell will have the right, at its expense and upon no less than 3 working days prior written notice, to audit Customer's use of the Licensed Works and records related to this use and MLA payments. Such audit may be conducted by Novell or its authorized representative, will not interfere unreasonably with Customer's business activities, and will be conducted no more often than once per calendar year, unless a previous audit disclosed a material discrepancy. If such audit shows Customer understated actual use of the Licensed Works or otherwise underpaid amounts owing, Customer will immediately pay all amounts owing. If an audit shows Customer understated use of the Licensed Works or underpaid amounts owing by more than 5%, Customer will pay the reasonable expenses of the audit. Novell will use information received during an audit solely for the purposes of this MLA and will otherwise maintain the confidentiality of such information.
- 8.2.1 Customer may request an audit under Section 8.2 be conducted at Customer's expense by an independent accounting firm approved by Novell; Novell may not unreasonably withhold approval. Novell will have the right to determine the audit scope and required audit testing and to review the audit work products prior to the finalization of the audit.
- 9 Term and Termination.
- 9.1 Term. The term of this MLA will begin on the Effective Date and will remain in effect for a period of 2 years from the first day of the month following the Effective Date. The MLA term will be automatically renewed for two-year periods until either party gives written notice otherwise at least 60 days prior to the end of the MLA term. *\* See Addendum*
- 9.2 Termination for Convenience. Either party may terminate the MLA solely for convenience at the end of any Annual Period by giving the other party written notice at least 60 days prior to the end of the Annual Period.
- 9.3 Termination for Cause. Either party may terminate the MLA upon written notice for the substantial breach by the other party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching party.
- 9.4 Immediate Termination. Either party may terminate this MLA, effective immediately upon written notice to the other party, if the other party (a) terminates or suspends its business, (b) becomes subject to any bankruptcy or insolvency proceeding under federal or state law, (c) becomes insolvent or unable to pay its obligations as they accrue, or (d) becomes subject to direct control by a trustee, receiver, or similar authority.
- 9.5 Effect of Expiration or Termination. Upon expiration or termination of the MLA for any reason, Customer's right to duplicate the Licensed Works and to acquire new MLA licenses

will immediately terminate. Customer's right to use Licensed Works for which it has paid the applicable fees shall be perpetual, subject to the surviving MLA provisions (For licenses transitioned to server-based licenses under 9.5.1 below, Customer's perpetual rights will be in the server-based licenses).

- 9.5.1 **Transition from MLA.** Upon expiration or termination of the MLA, Novell and Customer agree to work together in good faith to transition Customer from the MLA Program back to Novell's regular sales channels; this process will include replacing MLA Software with the number of Novell's standard server-based licenses which provide Customer at least equivalent functionality. This transition shall occur at no cost to Customer, except for any media costs incurred by Novell in replacing the MLA Software with Novell's standard licenses and/or media. Within 30 days after termination or expiration, Customer must certify in writing to Novell that it has destroyed or returned all Master Software to Novell.
- 9.5.2 **Discounted Maintenance Fees.** If the MLA is terminated for Novell's convenience or because of Novell's breach, Novell will refund any Maintenance Fees paid for the time period past the first day of the month following the MLA's termination date. Maintenance fees will not otherwise be refunded.
- 9.5.3 **Survival of Terms.** Sections 4, 8.2, 10, 11, 12, and 13 will survive MLA termination and will thereafter solely govern Customer's use of the Licensed Works, except that Customer's license to use any server-based licenses to which Customer is transitioned under Section 9.5.1 above shall be as described in the license which accompanies the software.
- 10 Intellectual Property Indemnification.**
- 10.1 Novell will defend or settle any claim, suit or proceeding brought against Customer so far as it is based on an allegation that a Licensed Work infringes a patent or copyright of the country in which Customer takes delivery of such Licensed Work. Novell will pay any damages, costs and expenses finally awarded (or agreed to by settlement) in any such claim, suit or proceeding. Novell shall be relieved of the foregoing obligation unless (a) Customer promptly notifies Novell of any such claim, (b) Novell has sole control of the defense and all related settlement negotiations, and (c) Customer provides Novell with the reasonable assistance, information and authority necessary to perform the above. If Customer desires to have separate legal representation in any such action, Customer shall be responsible for the costs and fees of its separate counsel.
- 10.2 If a Licensed Work is held to infringe and use of such Licensed Work is enjoined, or if in Novell's opinion a Licensed Work is likely to become the subject of infringement, Customer will permit Novell, at Novell's option and expense, to: (a) procure for Customer the right to continue to use the Licensed Work, or (b) replace or modify the Licensed Work so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Customer's return of the infringing Licensed Work, refund to Customer the consideration paid for such Licensed Work as amortized on a straight-line basis over a 3-year period from the date of delivery, whereupon Novell's continued liability to Customer will cease.
- 10.3 Novell shall have no obligation or liability for infringement that results from (a) Novell's compliance with Customer's designs, specifications, or instructions, (b) use of other than the current release of the Licensed Works, if the infringement would have been avoided by use of the current release and if the infringement occurs more than 90 days after Novell has made a public announcement or notified Customer that a previous release may infringe, (c) a modification of the Licensed Works that was not requested or authorized in writing by Novell, (d) use of the Licensed Works other than as specified in relevant Novell publications, (e) use of the Licensed Works in combination with any third party computer program, equipment, or other product not approved in writing by Novell for use with the Licensed Works, (f) the furnishing to Customer of any information, service,

or technical support by a third party, or (g) non-licensed use of the Licensed Works.

- 10.4 **Indemnification Limitation.** NOVELL'S LIABILITY UNDER THIS SECTION 10 IS LIMITED BY SECTION 12.1.1. THIS SECTION 10 STATES THE ENTIRE AND EXCLUSIVE OBLIGATION OF NOVELL TO CUSTOMER REGARDING ANY INFRINGEMENT CLAIM OR MISAPPROPRIATION OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

**11 Limited Warranty**

- 11.1 **Software.** Novell warrants that the Software will conform substantially to the specifications in the Documentation, provided that: (a) the Software is not modified by anyone other than Novell, unless authorized by Novell in writing; (b) Customer notifies Novell in writing of the nonconformity no later than 90 days after purchase; (c) Customer's computer equipment is in good operating order and is installed in a compatible environment; (d) the Software is installed in a compatible environment; and (e) the nonconformity is not caused by a third party or by Customer. In this Section, "conform substantially" means that the Software conforms to the vast majority of all specifications in the Documentation. Novell's only obligation under this warranty is to use reasonable efforts to cause the Software to conform substantially with the Documentation, or to refund to Customer the consideration paid for such Software upon Customer's return of all such Software and Documentation. In the event of a refund, Customer's right to use the Software shall automatically expire.
- 11.2 **Magnetic Media and Documentation.** Novell warrants that if either the magnetic media on which the Licensed Works are contained or the Documentation is in a damaged or physically defective condition at the time of delivery to Customer and if it is returned to Novell (postage prepaid) within 90 days of delivery, Novell will provide Customer with replacements at no charge.
- 11.3 **Services.** Novell warrants that the technical services and any consulting services provided under the MLA will be supplied in a professional manner. Customer acknowledges files may be altered or damaged in the course of Novell providing technical services, and agrees to take appropriate measures to isolate and back up its systems.
- 11.4 **Early Access Release.** Early Access Release (beta) software is provided to Customer "AS IS" without any warranty. Customer acknowledges that the pre-release software has not been fully tested and may contain errors and bugs. Customer must determine for itself the suitability of the use of Early Access Release software for any purpose. Novell does not guarantee that a commercial version of the software or that associated products will be released. Novell shall have no obligation to provide support for the software.
- 11.5 **Non-Novell Products.** Novell does not warrant non-Novell products. Any such products are provided on an "AS IS" basis. Any warranty service for non-Novell products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.
- 11.6 **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 11, NOVELL MAKES NO WARRANTY OR REPRESENTATIONS REGARDING ANY LICENSED WORKS OR SERVICES, NOVELL DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOVELL DOES NOT WARRANT THAT THE LICENSED WORKS WILL SATISFY CUSTOMER'S REQUIREMENTS OR THAT THE LICENSED WORKS ARE WITHOUT DEFECT OR ERROR OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. Some states/jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Customer.

This warranty gives specific legal rights which may vary from state/jurisdiction to state/jurisdiction.

- 11.7 **Hazardous Environments.** THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR RESALE FOR ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENT DAMAGE.

11.8 — See Addendum  
**12 Limitation of Liability.**

- 12.1 **Novell Liability.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL WILL NOT BE LIABLE TO CUSTOMER OR A THIRD PARTY FOR INDIRECT, SPECIAL, RELIANCE, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND (INCLUDING LOSS OF PROFITS, BUSINESS, OR DATA) RELATED TO OR ARISING UNDER THIS MLA, WHETHER IN A CONTRACT, TORT OR OTHER ACTION FOR OR ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, DELAY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the exclusions or limitations of this Section may not be applicable.

- 12.1.1 TO THE EXTENT ALLOWED BY APPLICABLE LAW, NOVELL'S LIABILITY FOR ANY CAUSE OF ACTION ARISING UNDER THIS MLA WILL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS MLA.

- 12.2 **Customer Liability.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, CUSTOMER WILL NOT BE LIABLE TO NOVELL OR A THIRD PARTY FOR INDIRECT, SPECIAL, RELIANCE, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND (INCLUDING LOSS OF PROFITS, BUSINESS, OR DATA) RELATED TO OR ARISING UNDER THIS MLA, WHETHER IN A CONTRACT, TORT OR OTHER ACTION FOR OR ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, DELAY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THIS SECTION DOES NOT APPLY TO VIOLATIONS OF NOVELL'S INTELLECTUAL PROPERTY RIGHTS.

- 12.3 **Limitation of Remedies.** THE REMEDIES DESCRIBED OR REFERRED TO IN THIS MLA SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR THE BREACH OF ANY MLA OBLIGATIONS.

See Addendum 13  
**13.1 General Terms.**

**Laws.** If signed by Novell, Inc., this MLA will be governed by the laws of the State of Utah and applicable federal (U.S.) laws, unless the laws of the state, province, or country of Customer's domicile require otherwise, in which case the laws so required will govern. The conflicts of law rules forming of the governing law are excluded. If either party initiates legal proceedings to enforce a term of the MLA, the prevailing party will be entitled to recover reasonable attorneys' fees. Each party will, at its own expense, comply with any applicable law, statute, ordinance, administrative order, rule and regulation.

- 13.2 **Dispute Resolution.** The parties will negotiate in good faith to resolve any MLA disputes. If negotiation does not resolve a dispute, senior officers of each party shall meet in person to attempt to resolve the dispute. This meeting must be held before either party may seek another method of resolution, including judicial or governmental resolutions. This section shall not prevent either party from seeking or obtaining temporary equitable remedies, including injunctive relief.

- 13.3 **Confidentiality and Information Exchange.** The receiving party of Confidential Information agrees to exercise reasonable care to protect Confidential Information from unauthorized disclosure, which care shall in no event be less than the receiving party gives

to protect its own confidential information. The receiving party may disclose Confidential Information only to its employees or agents who need to know such information and shall inform such employees or agents by way of policy and agreement that they are bound by obligations of confidentiality. These confidentiality obligations shall survive for 3 years after expiration or termination of the MLA.

- 13.3.1 **Confidential Information** means (a) the terms of this MLA, and (b) any other information the disclosing party desires to protect from unrestricted disclosure by the receiving party and that (i) if disclosed in tangible form, is marked in writing as "confidential" or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." Confidential Information does not include information that (1) is already in the receiving party's possession without obligation of confidence; or (2) the receiving party independently develops; or (3) is or becomes publicly available without breach of the MLA; or (4) the receiving party rightfully receives from a third party without obligation of confidence; or (5) the disclosing party releases for disclosure by giving written consent; or (6) is required to be disclosed by court or regulatory rule or order.

- 13.3.2 **Residuals.** Subject to patents and copyrights, either party may use Residuals for any purpose including developing products or services. "Residuals" means ideas, concepts, or technology contained in information retained in memory by a party's employees with access to Confidential Information, but does not include information deliberately memorized to classify it as Residuals. This Residuals provision does not give the receiving party the right to disclose business plans or financial, statistical, or personnel data of the disclosing party, and does not allow for any purpose the literal copying of a document. The receiving party will have no obligation to restrict the assignment of employees who receive Residuals.

- 13.4 **Force Majeure.** Neither party will be liable for any failure or delay in performance, if such failure or delay is due to war, strike, government requirements, acts of nature, acts or omissions of carriers, or other cause beyond its reasonable control; however, if a party's performance of any material obligation is reasonably expected to be delayed more than 3 months due to any such cause, the other party may terminate this MLA upon 30 days' prior written notice. Each party shall give prompt written notice of any condition likely to cause any delay or default.

- 13.5 **No Employment or Agency.** The parties are independent contractors. Neither the MLA terms nor any services provided will be construed to create an employment, agency or partner relationship between Customer and Novell.

- 13.6 **Notices.** All notices will be in writing. Notices to Customer shall be delivered to Customer's Contract Coordinator and Location Coordinator(s). Notices to Novell shall be delivered to Major Markets Contract Manager, MS Q-313, 1555 N Technology Way, Orem UT 84097-2399 USA. Notices may be delivered by certified or overnight mail, fax, courier, or overnight delivery.

- 13.7 **Binding Effect / Assignment.** This MLA is binding upon the parties' and their respective successors and assigns. Unless expressly permitted herein, neither party may transfer, assign, or delegate any right or obligation set forth in the MLA without the prior written consent of the other party; provided that neither party will unreasonably withhold consent for an assignment to the other party's parent or subsidiary. Either party may, upon prior written notice, assign the MLA to the surviving company in the event of a merger or acquisition. If Novell sells a Licensed Work to a third party, it may assign its MLA obligations regarding such product to the third party.

- 13.8 **Severability.** If an MLA provision is held invalid or unenforceable, the provision will be severed to the extent of such invalidity, or unenforceability.

- 13.9 **Waiver.** No waiver of any MLA right shall be effective unless in writing, signed by an authorized representative of the waiving

party. No waiver of any past or present right arising from any breach of failure to perform shall be deemed to be a waiver of any future rights.

- 13.10 Modifications. Except as expressly allowed in the MLA, the MLA may not be modified except in writing signed by authorized representatives of each party. In particular, the terms of a purchase order will not modify the MLA unless the parties agree otherwise in writing.
- 13.11 Entire Agreement. The MLA is the final and exclusive statement of and the entire agreement between the parties as to its subject matter. The MLA supersedes all prior and contemporaneous agreements and statements on these subjects. Each party warrants that in entering into this MLA, it has not relied upon or been induced by any representation not expressly set forth in this MLA.
- 13.12 Intellectual Property Rights and Remedies. Nothing in this MLA waives or limits extra-contractual rights and remedies available to Novell to protect its proprietary interest in the Licensed Works, including, rights and remedies available under U.S. copyright law, European Union law, the Berne Convention or other international treaties, or applicable national copyright and intellectual property laws of the countries in which Customer uses the Licensed Works.
- 13.13 Export. Regardless of any disclosure made by Customer to Novell of an ultimate destination of a Licensed Work, Customer will not directly or indirectly export or transfer any portion of the work, or any system containing a portion of the work, to anyone outside the U.S. (including further export if Customer took delivery outside the U.S.) without first complying fully with any export controls that may be imposed on the work by the U.S. Government or any country or organization of nations within whose jurisdiction Customer operates or does business. Customer assures Novell that absent any required prior authorization from the Bureau of Export Admn., 14th Constitution Ave., Wash DC 20230, Customer will not export or reexport (as defined in Section 734.2(b) of the Export Admn. Regulations, as amended ("Regulations")) the works or any technical data or other confidential information, or direct product of any of the foregoing to any country in Country Groups D:1 or E:2 as defined in the supplement No. 1 to Section 740 of the Regulations, or such other countries as come under restriction by action of the U.S. Government, or to nationals from or residing in the foregoing countries, without first obtaining permission from the appropriate U.S. Gov. authorities. The countries subject to restriction by the U.S. Gov. are subject to change; it is Customer's responsibility to comply with the U.S. Gov. requirements as amended from time to time.

## Schedule A

### MLA Coordinators (Required)

**Customer's Coordinators** (Complete the following to designate Customer's MLA Coordinators, as defined in Section 3 of the Terms and Conditions.)

Customer Name on MLA: State of Maryland

#### Customer's Contract Coordinator

Name: Connie McDonnell  
Title/Dept.: Director of Telecommunications  
Address: 301 West Preston Street  
  
City, State, Zip: Baltimore, Maryland 21201  
Country: 410.767.4647 Fax 410.333.7285  
Phone/Fax: \_\_\_\_\_  
E-mail: cmcdonne@dbm.state.md.us

#### Customer's Chief Financial Officer

Name: T. Eloise Foster  
Title/Dept.: Secretary Dept. of Budget & Mgmt  
Address: 45 Calvert Street  
  
City, State, Zip: Annapolis, Maryland 21401  
Country: \_\_\_\_\_  
Phone/Fax: 410.260.7042/410.974.2585  
E-mail: \_\_\_\_\_

#### Novell's Coordinators

##### Novell Representative Sales Office

Name: \_\_\_\_\_  
Title/Dept.: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

##### Novell's Contract Manager

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

#### Customer's Chief Information Officer

Name: Alisoun Moore  
Title/Dept.: Chief Information Officer  
Address: 45 Calvert Street  
  
City, State, Zip: Annapolis, Maryland 21401  
Country: \_\_\_\_\_  
Phone/Fax: 410.260.7259 410.974.5045  
E-mail: amoore@dbm.state.md.us

#### Customer's Information Services Director

Name: \_\_\_\_\_  
Title/Dept.: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

##### Novell's Area Account Executive

Name: \_\_\_\_\_  
Title/Dept.: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_



## Schedule B

### Premium Service Contacts (Required)

#### Company Information: Primary Support Site

Customer Name on MLA: \_\_\_\_\_  
[ ] Parent [ ] Subsidiary [ ] Affiliate : \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Management Contact: \_\_\_\_\_  
Phone/Fax/E-mail: \_\_\_\_\_  
Annual Discounted Maintenance Fee: \$ \_\_\_\_\_

#### Hotline Support Selection (Required) (Please choose one of the following)

Note that the specification of contacts and/or incidents, and of the number of subscriptions, must follow the allotment specified in the Premium Service Guide. Any variance in this Schedule from such allotment does not commit Novell to any additional services.

[ ] Standard Option (Unlimited Incidents)

Number of contacts \_\_\_\_\_ Number of Novell Support Connection CD Subscriptions \_\_\_\_\_

**OR**

[ ] Incident Option (Unlimited Contacts)

Number of incidents \_\_\_\_\_ Number of Novell Support Connection CD Subscriptions \_\_\_\_\_

Service & Support Authorization Number (assigned by Novell): \_\_\_\_\_

**Support Contacts** (Please identify the appropriate Support Contacts and Novell Support Connection CD Subscriptions below. If additional space is required, attach additional copies of this Schedule. **Please Note:** Customer's Contract Coordinator assumes the responsibility to coordinate the allocation and distribution of contacts, incidents, and support kits among the MLA's participating Customer entities.

Parent/Sub/Affiliate Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Schedule B**  
**Premium Service Contacts** *(continued)*

**Please fill out address information for any additional subscriptions you qualify for or wish to purchase under the MLA:**

Parent/Sub/Affiliate Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**Novell Sales Information:**

Regional/Country Manager: \_\_\_\_\_

Location: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Parent/Sub/Affiliate Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Account Manager: \_\_\_\_\_

Location: \_\_\_\_\_

Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Mail completed form to: MLA Contract Manager, Novell, Inc., 1555 N. Technology Way, MS Q313  
Orem, UT 84097-2399 U.S.A.

**Schedule C: Order Form (Product Licenses, Master Software, Maintenance, and Services) (Required)**

Date: \_\_\_\_\_  
Customer Name on MLA: \_\_\_\_\_  
MLA Contract #: \_\_\_\_\_  
MLA Discount %: \_\_\_\_\_  
**Purchase Order # (required):** \_\_\_\_\_  
Novell Sales Order # (completed by Novell): \_\_\_\_\_

**This order is for (check appropriate boxes)**

☐ License and Maintenance Purchases ☐ Purchase and Shipment of Master Disks  
☐ Maintenance purchases for licenses purchased outside of the MLA

**Ship To Information (required):**

Company: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_

**Ordering Location (if different than Ship To address):**

Company: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Invoice To Information (required):**

Company: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Installation Location (required):**

Company: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Country: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Purchasing Agent Contact (required)**

Name: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Local Novell Account Representative (required)**

Name: \_\_\_\_\_  
Phone/Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**CUSTOMER SIGNATURE (required)**

**For MLA purchases:** By signing below, Customer certifies that it has read and understands the Master License Agreement ("MLA") to which this Schedule C applies, and agrees to be bound by its terms. Customer is ☐ the party that signed the MLA, or a ☐ parent company ☐ Subsidiary ☐ Affiliate (check applicable box) of the party that signed the MLA.

**For Government GLA purchases:** By signing below, Customer certifies that it has read and understands the Government License Agreement ("GLA") to which this Schedule C applies, and agrees to be bound by its terms. Customer is ☐ the party that signed the GLA, or ☐ a department, agency, or organization (check applicable box) of such party.

Signature \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Price and Products are subject to change. All prices are based on U.S. dollars.

To order, send completed and signed Schedule C and/or purchase order to:  
MLA Order Management, Novell, Inc. 1555 North Technology Way, MS Q-231  
Orem, Utah 84097-2399 U.S.A., Fax: 801-228-9511

Please Note: Illegible or incomplete orders cannot be processed and will be returned

**Schedule C: Order Form (continued)**

MLA Customer:

If purchasing Maintenance for licenses purchased outside of the MLA, please list this purchase with an explanation on a Schedule C separate from other purchases. Please refer to the current month's MLA Price List for part numbers and pricing. Additional Order Forms are also available at <http://www.novell.com/programs/ncc/price.html>

Product License and Services		Part Number	Quantity	List Price	Discounted Price	Extended License Price	Extended Maintenance Price	Maintenance Dates	
Prod: <b>Example Product</b>	License	LIC-002466-001	2,340	\$142.00	\$68.16	Example: \$159,494.40		Beginning	End
	Mark One: Node or Copy	MNT-002466-001	2,340	\$29.80	\$14.30		Example: \$33,471.36	08/01/97	07/31/97
Prod:	License							Beginning	End
	Mark One: Node or Copy								
Prod:	License							Beginning	End
	Mark One: Node or Copy								
Prod:	License							Beginning	End
	Mark One: Node or Copy								
Prod:	License							Beginning	End
	Mark One: Node or Copy								
Prod:	License							Beginning	End
	Mark One: Node or Copy								
Prod:	License							Beginning	End
	Mark One: Node or Copy								
Prod:	License							Beginning	End
	Mark One: Node or Copy								
Please fill in all cells of a row.					Total License and Maintenance				

Product Software Masters* and Services	Part Number	Quantity	List Price	Discounted Price	Extended Price
Product:					
Product:					
Product:					
Product:					
*Masters are not needed for multiple purchases of same product.					Total Software Masters and Services

Grand Total of Order:

\$

Total of Products & Services

Special Comments:

Prices and products are subject to change. All prices based on U.S. dollars.

## MLA Membership Form

For Novell Use Only. MLA Membership Number: \_\_\_\_\_

Each Customer ordering location ("Customer") must complete this Membership Form in order to make purchases under the MLA. Complete and send this Membership Form, your Order Form, and a minimum initial purchase order of US\$5,000 (before discount) to Novell, Major Markets, M/S Q-313, 1555 N Technology Way, Orem UT 84097-2399 USA.

<b>Customer Information</b>		
Customer MLA Number:		Customer Name:
Street Address (no Postal Box) :		
City/State:	Country:	Zip/Post Code:
Billing Address (if different than above):		
City/State:	Country:	Zip/Post Code:
Location Coordinator Name (person responsible for contract administration):		
Location Coordinator Address (if different than above):		
City/State:	Country:	Zip/Post Code:
Telephone:	Fax:	E-mail:

	Purchasing Contact	Accounts Payable Contact	Controller Contact
Name:			
Telephone:			
Fax:			
E-Mail:			

Novell Account Manager:	Phone:	Fax:
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### Agreement

- 1 The entity that signed the Master License Agreement ("MLA") is \_\_\_\_\_ ("Signing MLA Entity").
- 2 Your relationship to the Signing MLA Entity is: ☐ Subsidiary, ☐ You signed the MLA, ☐ Affiliate (explain relationship, including percent of ownership or control, if applicable; if Affiliate, You hereby confirm you are approved by the Signing MLA Entity to participate in the MLA): \_\_\_\_\_
- 3 This Membership Form is a binding agreement that incorporates the MLA. You and Novell agree to be legally bound by the Membership Form and MLA terms. You and the Novell entity signing below will be directly responsible to each other for the performance of Membership Form or MLA obligations, and will be subject to any available claims and remedies by reason of breach of such obligations. It is the responsibility of the Signing MLA Entity to provide any enrolling Subsidiaries or Affiliates with a copy of the MLA.
- 4 The MLA licenses granted to or made available to Customer are described in this Membership Form's Attachment A, License Terms.
- 5 Customer agrees to pay the fees described in the MLA for the products or services ordered in the Order Form and associated purchase order which accompanies this Membership Form. Any terms submitted with an order do not modify the MLA unless the parties agree otherwise in writing.
- 6 Any action taken under the MLA's termination provisions shall only affect the MLA relationship between Customer and Novell, and not between other MLA Customers and Novell.
- 7 **Taxes.** The MLA fees are exclusive of all applicable taxes. You will pay and bear the liability for taxes associated with MLA deliverables, including sales, use, excise, and added value taxes but excluding: (a) taxes based upon Novell's net income, capital, or gross receipts, or (b) any withholding taxes imposed if such withholding tax is allowed as a credit against income taxes of Novell such as a withholding tax on a royalty payment made by You where such withholding is required by law. In the event You are required to withhold taxes, You will furnish Novell all required receipts and documentation substantiating such payment. If Novell is required by law to remit any tax or duty on Your behalf or for Your account upon delivery, You agree to reimburse Novell within 30 days after Novell notifies You in writing of such remittance. You will provide Novell with valid tax exemption certificates in advance of any remittance otherwise required to be made by Novell on Your behalf or for Your account where such certificates are applicable.

Are purchases made by your company under this agreement taxable? ☐ Yes ☐ No

If the purchases are sales tax exempt, an exemption certificate for all states that product will be delivered to is required and must be attached to this application. Sales tax will be charged on all shipments made to any state that Novell does not have an exemption certificate for.

Value Added Tax Number (if applicable): \_\_\_\_\_

- 8 Novell and Customer each have caused this Membership Form to be executed by an authorized representative.

☐ Novell, Inc., or

☐ \_\_\_\_\_ Novell Inc. Subsidiary is the Novell entity responsible for performing the Novell obligations under the MLA.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## License Terms

### MLA Membership Form - Attachment A

Use of the Licensed Works is subject to the following terms and restrictions together with all other MLA terms.

#### 1 License Definitions

- 1.1 **Client Software** means the software programs provided as part of the Software that operate on a single-user device, permitting that device to access the shared resources provided by Host Software.
- 1.2 **Competitive Upgrade** means a product of Novell's competitors designated by Novell as qualifying for an Upgrade to Novell Software.
- 1.3 **Documentation** means user documentation and manuals (including CD-ROM versions, when available) provided by Novell which accompany a Software product.
- 1.4 **Host Software** means the software programs provided as part of the Software that are designed to operate on a single computing device, providing access to the shared resources attached to that computer. Host Software may contain technical limitations that limit use of the Host Software to a specified number of computers running Client Software.
- 1.5 **Internal Use** means Use by (a) Your employees for Your internal business, and (b) Your consultants and contractors only while performing work for You on Your premises.
- 1.6 **NLM Software** means Software delivered with Host Software and capable of running on the Host Software.
- 1.7 **Node** means a network connection identified by a unique network address; printers, faxes, mail servers and other devices attached to the network also constitute a Node.
- 1.8 **Software** means the Novell software product(s) licensed to You under the MLA.
- 1.9 **Update** means a fix or compilation of fixes released by Novell during the term of the MLA to correct operational defects (program bugs) in the Software.
- 1.10 **Upgrade** means any new version of a Software product which bears the same product name, including version changes evidenced by a number change immediately to either the right or left of the decimal (for example, GroupWise 5.1 to 5.2 or GroupWise 4.0 to 5.0). If a question arises as to whether a product offering is an Upgrade or a new product, Novell's opinion will prevail, provided that Novell treats the product offering the same for its end user customers generally.
- 1.11 **Use** means loading the Software into the temporary memory of a computing device, i.e., RAM, and running or executing it for the purposes for which the Software was designed. Unless the applicable license states otherwise, Use will be limited to a single computing device.
- 1.12 **User Count** means the number of users specified for use with a product.

**2 License Grant.** Upon payment of the applicable license fees and Novell's receipt of the order for a Licensed Work, Novell grants and You accept the licenses below. Your licenses to Use the Licensed Works (but not to make copies of Master Software) will survive expiration of the MLA and be perpetual. Novell, Inc. is the licensor of the Licensed Works, except that (i) if Your address provided on the Membership Form is in Europe, the Middle East, or Africa, and Novell Ireland Software Ltd. or other Novell subsidiary is listed as the Novell contracting party on the Membership Form, then the licenses are granted by Novell Ireland Software Limited or made available on its behalf, and (ii) if Novell Japan is the Novell entity that signs the Membership form, the licenses are granted by Novell Japan.

- 2.1 **Network Node License.** Novell grants a non-exclusive, non-transferable, and worldwide license to (a) provided you do not receive any direct payment, make and distribute an unlimited number of copies of the Host Software for Your Internal Use, and (b) conditional upon paying the applicable Discounted License Fee for each Node with which the Host and Client Software is to be Used, make, distribute, and Use the Client Software for Your Internal Use and use the NLM Software on the Host Software.
- 2.2 **Server Network License.** Novell grants a non-exclusive, non-transferable, worldwide license to (a) Use the Host Software on a single computing device (network server) to connect to and simultaneously Use up to the number of copies of Client Software specified by the User Count, and (b)

provided you do not receive any direct payment, make and distribute an unlimited number of copies of Client Software for Your Internal Use, (c) use the NLM Software on the Host Software.

- 2.3 **Node and Server Licenses.** Certain Software licensed by Novell on a Network Node basis under the MLA, such as IntranetWare, is also licensed by Novell on a Server Network (server-based red box licenses) basis. You may acquire such Software through either Network Node or Server Network licenses under the MLA, but may not mix Network Node and Server Network at a single Customer location (a facility with an individual street address).
- 2.4 **BorderManager License.** Your license grant for BorderManager is described in the license delivered with the product or otherwise made available to you through the MLA Program. A copy of the license grant is available from Novell.
- 2.5 **Netscape Navigator.** If You purchase a license for a product that includes Netscape Navigator Software, You may install a copy of Netscape Navigator on each computing device running the Client Software in support of the Host Software for Use: (a) primarily in support of the NLM Software, and (b) for Internet or World Wide Web access.
- 2.6 **MultiProtocol Router.** If You purchase a license for a product that includes NetWare MultiProtocol Router Software (an NLM Software program), Your license is for 1 port for each server upon which You load the product that includes the MPR Software.
- 2.7 **IPX/IP Gateway.** If You purchase a license for a product that includes the IPX/IP Gateway Software, Novell grants You a 250-user (1000-user for BorderManager) license for each server upon which You load the product that contains the Gateway Software.
- 2.8 **Mailbox License.** Upon payment of the applicable license fee for each user Mailbox (an account for the storage of electronic mail, regardless of whether attached to a network and/or remote) with which the Software is Used, Novell grants a non-exclusive, non-transferable, worldwide license to copy, make, and distribute the Software for Your Internal Use on Your computer systems. A Mailbox license is not required for Mailboxes that are used solely for physical facilities, such as a printer mailbox or a fax mailbox. A Mailbox License for GroupWise 4.1 Software includes the right to access SoftSolutions via a SoftSolutions Remote Document Server. For GroupWise Gateway Software sold separately from GroupWise Software, the following provision applies:
  - 2.8.1 **Gateway Mailbox License.** Upon payment of the applicable license fee for each user Mailbox that can connect to the GroupWise Gateway Software, Novell grants a non-exclusive, non-transferable, worldwide license to copy, make, and distribute the Software for Your Internal Use on Your computer systems. You must have a GroupWise Gateway Software license for each such connection in addition to the GroupWise Software mailbox license required to create the Mailbox.
- 2.9 **Per Copy License.** Upon payment of the applicable license fee for each copy of the Software, Novell grants a non-exclusive, non-transferable, worldwide license to make and distribute those copies of Software for Your Internal Use on Your computer systems.
- 2.9.1 **SoftSolutions.** Additionally, a license is required for each copy of SoftSolutions, whether executing from or residing on a host computer, memory, or a Portable Mode Enabled computer; or stored on a storage device of any kind, on multi-user computer(s), single-user computer(s), or local/wide area networks (servers and workstations/clients). In addition, a license is required for each computer that accesses the Software via a SoftSolutions Remote Document Server. You may use the Software in only a single environment (Windows or DOS) at a time. A Server Enhancement Module (SEM) license is required for each File Server license, even though a SEM copy needs to be Loaded for each Dataset and a single set of SoftSolutions program files may access multiple Datasets.
- 2.10 **Novell Support Connection CD.** For each subscription to the Novell Support Connection CD, Novell grants You a nonexclusive, nontransferable right to copy and distribute the CD for Internal Use on all Your computer systems at Your location(s).
- 2.11 **Early Access Release Software.** If Novell provides You Early Access Release (beta) software, You are authorized to Use such software solely for evaluation purposes. As Early Access Release software, documentation, and related information is confidential to Novell, You may not disclose it outside of Your organization without Novell's prior written

consent. Your license to Use such software terminates upon the earlier of Novell's general release of the software to the public or written notice from Novell.

- 2.12 **Documentation.** If Documentation for the Software is provided with the Software in CD-ROM format, You may for internal use print copies of such Documentation from the on-line screen up to the number of MLA licenses You have purchased. Novell will, through third parties, make hard-copy Documentation available for Your purchase; You may duplicate for internal use Documentation You have purchased up to the number of MLA licenses You have purchased for that Software. Documentation for Software that is not at the current revision level will be made available for up to two months after the last shipment date of the Software.
- 2.13 **New Products or Upgrades.** So that Novell may make available on the MLA Price List new Software products or Upgrades to current products, Your license grant for a product or Upgrade may differ from the above license terms. If there is a conflict or inconsistency between the above license grants and the license grants made available to You with a product or Upgrade, the latter license grants will prevail; as to all other contractual provisions, the MLA with this License Terms Attachment will prevail.
- 2.14 **Commercial Public Network Service ("CPNS") Restriction.** You may not use IntranetWare, NetWare 4.x, or BorderManager Software, or later versions of this Software, in a CPNS without first obtaining a separate license from Novell (for more information, see <http://www.novell.com/internet>). A CPNS is a service offered to the general public or to businesses, and that provides Internet access, virtual private networking, remote network management, access to corporate or other networks, or access to any remote computing device, application, service or data.
- 2.15 **Upgrade Restrictions.** Whether You receive Upgrade licenses through Maintenance or through a separate purchase, You accept and Use Upgrade licenses subject to the following terms:
- 2.15.1 Use of an Upgrade is limited solely to replace (a) a Novell product acquired by You pursuant to a valid Novell license, or (b) a Competitive Upgrade for which Novell is offering an Upgrade. In either case, the product from which You are upgrading is referred to below as the "Original Product."
- 2.15.2 In the case of System Products (products not identified in the MLA Price List as GroupWare Products), You agree (a) that 90 days after installation of the Upgrade, the license associated with the Original Product will automatically terminate and become void, and (b) to return or destroy the Original Product within such 90 day period.
- 2.15.3 In the case of GroupWare Products (as identified in the MLA Price List), You may Use either the Upgrade or a prior revision of the Upgrade, but never both revisions at the same time on any given machine.
- 2.15.4 Except as expressly permitted in this Upgrade Restrictions Section, You will not use, sell, or transfer the Original Product upon receipt of an Upgrade.
- 2.15.5 You accept any Upgrades under the terms of the license type described in this MLA, in the Order Form, and in the MLA Price List as applicable to the upgraded Software.
- 2.15.6 Nothing in this MLA will be construed to warrant or imply that Upgrades or Updates will be produced for any product or, if so produced, when such Upgrades or Updates will be made commercially available.
- 2.16 **Specific Licenses.** Unless otherwise authorized in the MLA, Documentation, or in writing by Novell, no right is granted to Use Client or Host Software to directly access client software or host software provided by other vendors.
- 2.17 **Connection Management Software.** You may not modify any Connection Management Software (software designed to prevent more connections than the number of licensed connections specified by the Documentation, packaging, or user materials of the Software) included in or provided with the Software. Further, You may not use any device, process or computer program that increases, either directly or indirectly, the number of connections to the Host Software.
- 2.18 **Ownership.** Ownership of and title to the Licensed Works (including adaptations or copies) is held by Novell or its licensors. Copies are provided only to allow You to exercise license rights.
- 2.19 **Transfer of License.** Except as otherwise provided in the MLA, You may transfer licenses to another entity only after receiving prior written consent from Novell. With any license transfer, You will transfer all copies of the transferred Software with its Documentation and any

copies/adaptations made.

- 2.20 **Copies.** You may copy the Software only for Internal Use (including an archival or backup copy for each copy of Software licensed under this Agreement). All proprietary rights notices must be faithfully reproduced and included on all copies and any adaptations. You may only copy Documentation as expressly allowed above.
- 2.21 **Notice to Employees and Agents.** You will use commercially reasonable efforts to inform Your employees, agents, and other individuals using Licensed Works under the MLA that the Licensed Works may not be used, copied, or transferred in violation of the MLA terms.
- 2.22 **Restrictions.** Except as may be expressly authorized in this MLA, You will not rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, adapt, disassemble, or reverse-compile Licensed Works. Where You have a statutory right to adapt, disassemble or decompile the Software to obtain information needed to achieve interoperability with other programs, You will not exercise such right unless Novell does not respond within 60 days after receipt of a written request to provide the necessary information.
- 2.23 **Outsourcing.** Upon prior written notice to Novell, You may permit Use of the Licensed Works by a supplier of information services ("Supplier") to the same extent You are permitted to do so, provided that You first purchase sufficient licenses to support such Use and execute a contract with the Supplier that obligates the Supplier to (a) use the Software only for Your internal business purposes and in accordance with the MLA terms, (b) maintain a logical or physical partition within its computer systems which use the Software so as to restrict Software use and access to a portion solely dedicated to Your beneficial use, and (c) allow You or Your agent to audit the Supplier's premises and records relating to use of the Licensed Works for at least 1 year after the earlier of expiration of the MLA or Your contract with Supplier, in order ensure Supplier's compliance with the MLA in its Software use.
- 2.23.1 Within 30 days after entering into such an agreement with a Supplier and providing Licensed Works to the Supplier, You must notify Novell in writing of the name of the Supplier and of the start and expiration dates of the contract between You and the Supplier. If You provide Licensed Works to a Supplier, You must keep records detailing to which entities specific Licensed Works were provided, on what dates, where Master Software is stored, and You must have an established process for retrieving Licensed Works once the MLA or Your contract with the Supplier is terminated.
- 2.23.2 If Novell so requests, You, through Novell or at Novell's option through an entity mutually agreed to by You and Novell, will audit the Supplier for compliance with the MLA terms. Novell shall use the information obtained from any such audit solely to determine compliance with the MLA and to remedy any noncompliance. You irrevocably appoint Novell as Your authorized representative for the purposes of carrying out any audit under the above paragraph. You shall be responsible for use or copying of the Software by the Supplier which violates the MLA terms. You will notify Novell in writing immediately upon learning of the reasonable possibility of a third party's violation of the MLA's terms.
- 2.24 **U.S. Gov Restricted Rights.** Use, duplication, or disclosure by the United States Government is subject to restrictions in FAR § 52.227-14 (Jun 1987) Alternate III (June 1987), FAR § 52.227-19 (June 1987), or DFARS § 252.227-7013 (b)(3) (Nov 1995), or applicable successor clauses. Manufacturer is Novell, Inc., 1555 N Technology Way, Orem, UT 84097.

**3 Limited Warranty.** See the MLA Limited Warranty sections for a description of the MLA warranties.

**4 Limitations of Liability.** See the MLA Liability Limitations sections for a description of the MLA's limitations of liability.

**5 Intellectual Property Infringement.** See the MLA Intellectual Property Indemnification sections for a description of Novell's indemnification for intellectual property infringement claims.

**ADDENDUM TO  
MASTER LICENSE AGREEMENT  
(State of Maryland)**

This Addendum amends and supplements the Master License Agreement ("MLA") version 5.0 (3/1/98) between The State of Maryland ("Customer") and Novell, Inc. ("Novell").

1. **Definitions.** Terms with the initial letter capitalized will have the same meaning as defined in the MLA, unless otherwise defined in this Addendum.

2. **Amendments to MLA.** The MLA is amended and supplemented as follows:

- A. Section 2.3 Customer is modified by deleting the text of this section in its entirety and replacing it with the following:

Customer means the State of Maryland and any agency, office, institution, or political subdivision permitted by the State of Maryland to participate in this MLA. Upon initial order, each Customer agrees to submit to Novell a signed Membership Form.

- B. Section 7.4, Late Payments is deleted in its entirety.

- C. Section 9.1 Term is modified by deleting the last sentence of this section and replacing it with the following:

The MLA term may be renewed for two (2) additional two(2) year terms upon written agreement of both parties.

- D. This Section 11.8 is added as a new MLA section:

Year 2000 Warranty. Novell warrants that the latest and any subsequent versions of IntranetWare and GroupWise 5.2 Software, and those other products identified as Y2000 Ready on Novell's Year 2000 site at <http://www.novell.com/p2000/product.html>, are Year 2000 Compatible when used in accordance with the Documentation provided (i) the Software is not modified unless by Novell or as authorized by Novell in writing, and (ii) the Software is installed in a compatible system environment. Year 2000 Compatible means a Software product will, when all updates and fixes as made available by Novell have been installed, and provided all other products used with the Software properly exchange accurate date data with it:

- (1) Accurately process date data involving dates on or after December 31, 1999, whether or not the dates occur on leap years, except that this warranty doesn't apply to dates used as a device or system's operating date which are prior to January 1, 1980 or after December 31, 2034, and,
- (2) provide that data fields include the indication of century and millennium, except that a



date may be represented without a century and millennium if the correct century is unambiguous for all manipulations involving that date.

This warranty begins when Customer licenses the covered Software products and ends the earlier of expiration of the Agreement or March 31, 2000. Novell's only obligation under this warranty shall be that if Customer notifies Novell of a warranty breach during the warranty term, Novell will at its option either remedy the problem with a fix to the Software or by providing an upgrade to the Software that is Year 2000 Compatible, or offer Customer a refund of the Software purchase price upon return of the Software. This warranty does not apply to third party products supplied by Novell whether or not bundled with Novell products.

- E. Section 13.1 Laws is modified by deleting the text of this section in its entirety and replace it with the following:

This MLA is governed by the laws of the State of Maryland and applicable federal (U.S.) laws.

3. **Continuance.** Except as expressly amended and supplemented by this Addendum, the terms and conditions of the MLA will remain in effect unchanged. If and to the extent that any inconsistency may appear between the MLA and this Addendum, the provisions of the Addendum shall control.

NOVELL, INC.

Signature \_\_\_\_\_

Print Name David Hoffman  
Contract Manager

Title \_\_\_\_\_

Date 7.31.00

THE STATE OF MARYLAND

Signature \_\_\_\_\_

Print Name Alisoun Moore

Title Chief Information Officer

Date July 28, 2000

